IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3143 OF 2007
IN
SUIT NO.2528 OF 1990

Amar International. ..Plaintiffs.

V/s.

Dayanu Shankar Karande. ..Defendant.

And

M/s.Mahavir Enterprises ..Applicants.

And

Om Mayureshwar Co-op.Housing Society Ltd..Respondents.

Mr.Pankaj Kawle i/b. S.Ashwinikumar & Co. for Applicants.

Mr.Guram, representative of Court Receiver.

CORAM: A.M.KHANWILKAR,J

DATE : SEPTEMBER 10, 2007.

P.C. :

1. Heard Counsel for the parties. Perused the pleadings and the relevant documents.

2. The background in which the present Motion has been taken out by the Applicants is that the Plaintiffs filed Suit for recovery of certain amounts against the Defendant. In the said proceeding, this Court by Order dated 2nd May, 2002 appointed Court Receiver to take over the physical possession of the

Flat No.9 in Om Mayureshwar building, which is the property of the Om Mayureshwar Co-operative Housing Society Ltd.. It appears that the building is in dilapidated condition. As a result, the members of the said Society have resolved to go for redevelopment of the property. Naturally, the redevelopment would include the Flat No.9, which is subject matter of attachment before Judgment in Suit No.28 of 1990.

3. It is however, inconceivable to accept the claim of the Plaintiffs that because Court Receiver has been appointed in respect of the said Flat, Society and other members who have no concern with the dispute between the Plaintiff and the Defendant-Dayanu Shankar Karande, should be made to suffer. As this Flat No.9 is in physical possession of the Court Receiver, the appropriate course in this situation is to direct the Court Receiver to discharge all the obligations of the member of the Society for the redevelopment of the said Om Mayureshwar building of which Flat No.9 forms part thereof. In other words, Court Receiver will execute all agreements in relation to the said Flat, so as to get alternate flat in the newly constructed building in lieu of Flat No.9. Indeed, the membership in

relation to that flat will be in the name of the Defendant. But the possession of the Flat in the newly constructed building, to be allotted by the Society in the name of the Defendant, shall be taken by the Court Receiver.

4. The argument of the Plaintiffs is that the terms of redevelopment agreement are defective. On this basis, the Plaintiff is opposing prayer made in the present Motion.

5. I see no merit in those submissions. In the present proceeding, it is not open for this Court to go into the correctness of the issues raised by the Plaintiffs.That is not the subject matter of the Suit pending between the Plaintiffs and Defendant before this Court. The argument however, is that on account of defects in the agreement the property may eventually be permanently lost, as there will be no development of the property, in case the Developers fails to discharge his obligation under the redevelopment agreement. The argument clearly overlooks that redevelopment is of the entire property and not only of flat No.9 of Defendant. There are other 11 members of the society who are interested in the redevelopment. Redevelopment is not at the

instance of Defendant, but as per the decision taken by the General Body of the Society. In the event the developer fails to discharge his obligations the society is bound to pursue appropriate action against the developer; The Society may also consider engaging another developer to complete the work of for redevelopment of the property. So long as the Society continues to be the owner of the plot on which the said Om Mayureshwar building is standing and susceptible to the redevelopment, there is no basis in the apprehension expressed by the Plaintiffs.

5. Thus understood, in my opinion, Motion can be disposed of by issuing following direction to the Court Receiver.

(a) The Court Receiver shall cooperate with the Society and discharge all the obligations of the Defendant member of the Society- Om Mayureshwar Housing Co-operative Housing Society Ltd. to facilitate redevelopment of the building-property of the society, which is in a dilapidated condition. The Court Receiver to execute such documents, as may be necessary for the purpose of redevelopment of the property. The Court

Receiver however, to execute necessary documents only upon being satisfied that there is clear resolution passed by the Society to allot similar premises to Defendant in the new building in lieu of Flat No.9, as is being offered to the other members of the Society of equivalent size area and other matters; and that the agreement would contain clear and express covenant that the Society is obliged to allot and earmark one flat in the newly constructed building for and on behalf of Dayanu Shankar Karande-Defendant in the Suit, which in turn shall remain in possession of the Court Receiver till the disposal of the Suit or till such further orders, to be passed by the Court. It is only on compliance of the above terms the Court Receiver may proceed to execute necessary documents.

6. Motion disposed of on the terms.

(A.M.KHANWILKAR,J)